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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

PALOMAR MOBILEHOME PARK ASSOCIATION, a Limited Partnership,

Petitioner,

vs.

THE CITY OF SAN MARCOS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FOURTH APPELLATE DISTRICT, DIVISION ONE, COURT OF APPEAL FOR THE STATE OF CALIFORNIA

PETITIONER'S REPLY BRIEF

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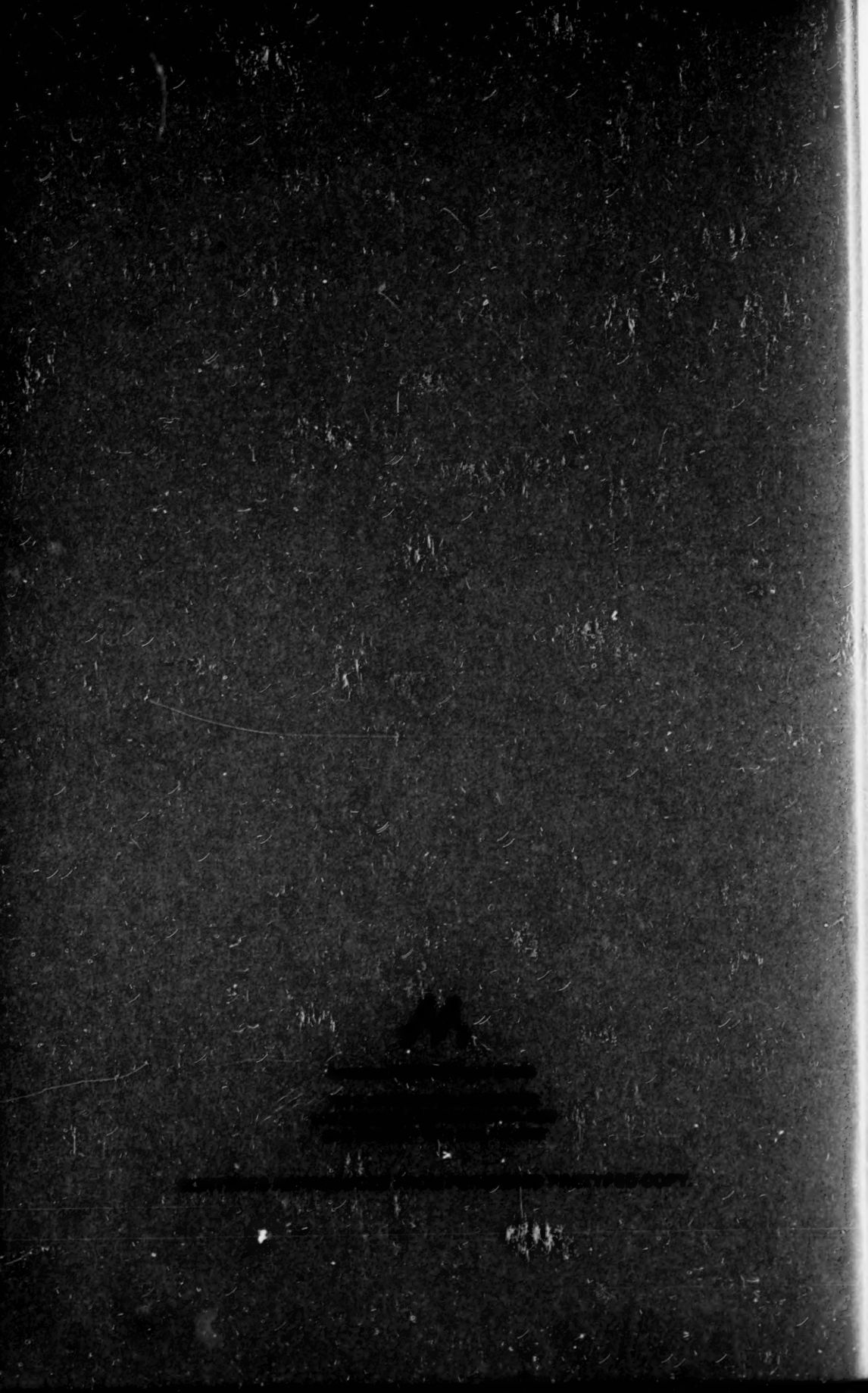

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PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner PALOMAR MOBILEHOME PARK ASSOCIATION hereby replies to the arguments raised in Respondent CITY OF SAN MARCOS' Brief in Opposition filed in this Court in the above matter.

INTRODUCTION

Review by this Court is sought to settle important issues of law on which the California courts are in direct conflict with the Federal courts.

APARTMENT RENT CONTROL IS DIFFERENT FROM MOBILEHOME RENT CONTROL IN CALIFORNIA.

Apartment rent control differs from mobilehome rent control in one very significant way in California. Because

the Mobilehome Residency Laws specifically protect the tenants from eviction of the mobilehome upon transfer and allow the coach to be sold "in-place", subject to approval by the landlord on the basis of the ability to pay[1], the outgoing tenant has significant influence over the identity of the incoming tenant. Prior to the imposition of rent control, however, the landlord's ultimate ability to choose was unimpaired because, as a practical matter, the rent could be raised (or reduced) to any amount as a process of individual negotiation between the Parkowner and the incoming tenant within the confines of the free market.

With rent control, and particularly with "vacancy control", i.e. the prohibition by the City on raising rents

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[1] See Cal. Civ. Code § 798.74, Appendix D to Petition, pp. 44-47.

at the time of transfer or sale, the Parkowner plaintiff is denied of his ability to choose the incoming tenant. He cannot withhold approval if the tenant can pay, and he cannot raise the rent. Effectively, as long as the selling tenant finds someone who can pay the current rent, that person or persons cannot be denied occupancy in the Park.

Thus the landlord is denied important control over the use of his (or her) land. That loss of control over possession is a taking and has been held to be so in Hall v. City of Santa Barbara, 833 F.2d 1270, (9th Cir. 1987) cert. denied 485 U.S. 940 (1988) and Pinewood Estates of Michigan v. Barnegat Township, 898 F.2d 347 (3rd Cir. 1990).

In apartment rent control, the outgoing tenant has nothing to sell. He or she merely surrenders the unit to the

landlord, who, even if some form of vacancy control prohibits rental increases[2], can exercise full control over the identity of the next tenant. As the Hall court recognized, it is the power to choose who occupies, whether by aesthetic or economic methods, that invokes the Constitution.

> That tenants normally cannot sell their rights in rent controlled property provides important safeguards for landlords. Tenants, like the rest of us, are not immortal; nor are they immune to the normal familial and economic pressures that occasion vacancies even in rent controlled housing. If they are denied the right

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[2] In reality, very few, if any, apartment rent control ordinances in California preclude the landlord from raising the rent once the unit becomes vacant.

to cash out, tenants can enjoy the benefits of rent control only so long as they remain tenants, not beyond. When the premises become vacant, the landlord is able to reassert a measure of control over the property. He may choose to occupy it himself; or to allow a friend or relative to stay there; or to keep it vacant; or make improvements in the hope of raising the rent to the extent allowed by law; or to rent it to a new tenant, presumably making the selection on the basis of factors that will maximize his total return on the property. Between tenants, the landlord can thus assert important prerogatives as property owner and make significant decisions as to the property's use. The tenant, for his part, must make difficult choices: if he wants the

> benefits of the rent control ordinance, he must stay put. If he wants to leave, he must give up a good thing.

Hall, supra, at 1279. (See also fn. 23 at 1279).

The City's citations to Pennell v. City of San Jose, 485 U.S. 1 (1988), Fisher v. City of Berkeley, 37 Cal.3d 644, 209 Cal.Rptr. 682, app. dism. 471 U.S. 1124 (1985), Nash v. City of Santa Monica, 470 U.S. 1046 (1985) and Schnuck v. City of Santa Monica, 935 F.2d 171 (9th Cir. No. 89-55283) (June 4, 1991), all apartment rent control cases, are simply inapplicable in the analysis of the constitutionality of vacancy control provisions of mobilehome rent control laws.

A CHALLENGE TO A RENT CONTROL ORDINANCE AS AN OVER-REGULATORY PRICE CONTROL ON THE BASIS THAT IT CONFISCATES PROPERTY BECAUSE IT DENIES THE OWNER A "JUST AND REASONABLE" RATE OF RETURN IS ENTIRELY DIFFERENT THAN THE CHALLENGE BROUGHT FORTH HERE (AND IN HALL AND PINEWOOD) THAT A PHYSICAL OCCUPATION TAKING RESULTS FROM THE VACANCY CONTROL PROVISIONS OF THE CITY'S MOBILEHOME RENT CONTROL ORDINANCE SUPERIMPOSED UPON EXISTING STATE LAW.

Respondent City of San Marcos as well as the Fourth Appellate Court confuses a challenge to a particular rate under the price control aspects of rent control with the challenge brought by plaintiff in its lawsuit that the ordinance effects a physical occupation taking.

The Hall court addressed the same argument raised by the City of Santa Barbara by saying:

> The adequacy of compensation, if any, paid to appellants is yet another inquiry fraught with factual uncertainty. The city would short-circuit this process by arguing that appellants are adequately compensated because they are entitled to rent that assures them a fair return on their investment. That, however, is not the test in cases involving a claim of taking by physical invasion, as opposed to mere regulation. For example, Mrs. Loretto's claim was not defeated because she continued to collect rents on the apartment building upon which the cable was strung. See Loretto, 458 U.S. at 442, 102 S.Ct. at 3179-80.

Hall, supra, at 1281 (emphasis added).

The Pinewood Court understood the difference when it wrote:

> Overall, we are quite satisfied that appellants have pleaded a cause of action. The operation of the Barnegat Ordinance in connection with state law has created valuable property interests for which appellants have not been compensated. Furthermore, if the rather minor intrusion in Loretto was deemed a physical invasion then the gross intrusion here must be so classified. This is not a case in which a property owner has simply been told that he cannot do something on his property or that he must use his property a certain way. The situation is aggravated by the fact that the transfer is accompanied by the payment

not to the landlord but to the departing tenant of what amounts to rent for the use of the pad. This "rent" is for the possessory interest of the landlord. Thus, this is a case where other persons, tenants, have been granted interests in property which properly belongs to the appellants, the landlords. We acknowledge of course that appellants may receive a constitutionally adequate rent for the occupancy of the tenants as such, but that fact is not material to our analysis for, according to the complaint, they receive nothing at all for the taking of the alienable physical property interest vested in their tenants.

Pinewood Estates, supra, 898 F.2d at 353 (emphasis added).

The California cases cited by the City, Yee v. City of Escondido, 224 Cal.App.3d 1349, 274 Cal.Rptr. 551 (1990) rev. den. 01-24-91, and Casella v. City of Morgan Hill, 230 Cal.App.3d 43, 280 Cal.Rptr. 876 (1991) rev. den. 07-17-91, likewise confuse the "fair return" issue with the issue of an unconstitutional transfer of possessory property rights.

As a point of reference, this Court may take judicial notice of two cases currently pending on appeal to the California Fourth Appellate District, Division One, which are legal challenges to the rate of return, Palomar Mobilehome Park Association, dba Palomar Estates East v. Mobile Home Rent Review Commission; City of San Marcos, R.p.i., 4th App. No. DO14563 (San Diego Superior Court Case No. N 48882), and Palomar Mobilehome Park Association, dba Palomar Estates West v.

Mobile Home Rent Review Commission; City of San Marcos, R.p.i., 4th App. No. D014591 (San Diego Superior Court Case No. N 48883). Both cases complain that the City's failure to grant park-wide space rental increases pursuant to Palomar's applications unconstitutionally confiscates its property by denying its regulated enterprise a "just and reasonable" rate of return.

THE CITY'S ARGUMENT THAT F.C.C. VS. FLORIDA POWER CORPORATION "SUPERSEDED" LORETTO VS. TELEPROMPTER MANHATTAN CATV CORPORATION AND "UNDERMINED" HALL VS. CITY OF SANTA BARBARA IS PATENTLY ERRONEOUS.

The City alleges that the Fourth Appellate Court, in rendering the decision at issue here, 'examined Hall and Pinewood Estates v. Barnegat Township, found them unpersuasive and their reliance on Loretto v. Teleprompter Manhattan CATV Corp.

misplaced and superseded by a subsequent United States Supreme Court decision, F.C.C. v. Florida Power Corp., 480 U.S. 245 (1987)'. (Opposition p. 8)

Further the City alleges that 'F.C.C. undermined the Hall rationale by finding no taking where a property owner had voluntarily entered into a lease' citing F.C.C.:

> [I]t is the invitation, not the rent which makes the difference. The line which separates these cases from Loretto is the unambiguous distinction between a commercial lessee and an interloper with a government lease.

F.C.C. at 252-253.

Contrary to the City's arguments (and the Fourth Appellate decision to the extent it relies on F.C.C. for the propositions advanced by the City) F.C.C. v. Florida Power Corp does not provide

negative precedence for this case. In F.C.C., the issue was whether the regulation setting rental rates charged for the already occupied utility poles was unconstitutionally confiscatory because the rates were set too low. The Court, in analyzing whether the utility company was receiving a "just and reasonable rate of return" determined that as there were nothing in the regulation requiring the utility companies to allow the cable companies to use the poles, no right of possession had been transferred and Loretto was factually inapplicable. (F.C.C. 480 U.S. at 250).

Indeed, the Court noted that the analysis in F.C.C. would have been quite different had the cable TV tenants of the rent-controlled power poles subsequently sold the right to occupy the poles to an incoming tenant. As the Court in F.C.C.

said, "nothing in the Pole Attachments Act. . .gives cable companies any right to occupy space on utility poles" and specifically reserved for a later day the question of "what the application of Loretto. . .would be if the FCC in a future case required utilities, over objection, to enter into, renew, or refrain from terminating pole attachment agreements." (F.C.C. 480 U.S. at 251 and fn. 6, 251-253.) Here, as in Hall, the facts are more similar to the facts in Loretto v. Teleprompter (1982) 458 U.S. 419. The vacancy control provisions of the rent control ordinance, enacted upon existing state law (Civil Code §§ 798 et seq), requires the plaintiff landlord to accept the incoming tenant and requires the rental rate not be increased. This results in the unconstitutional occupation of property by "an interloper with a

government license" condemned by Loretto, Hall, Pinewood Estates and F.C.C. by the Court's distinguishing its decision from that in Loretto.

The City cannot make its ordinance constitutional by the mere fact that plaintiff is in the rental business. Although consent was given to occupation of a space by the tenant prior to rent control, just as the concept of "consent" for a prescriptive easement does not automatically create consent to any subsequent users, the consent given by plaintiff to use the space at a particular rent cannot be said to extend to the tenant upon transfer at a fixed rent whom plaintiff does not choose.

CONTRARY TO RESPONDENT'S ASSERTIONS, THE HALL COURT WAS WELL AWARE OF THE OCEANSIDE CASE.

Respondent argues that the six Court of Appeal's judges in the Ninth and Third Circuits were ignorant of the existence of Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside, 157 Cal.App.3d 887, 204 Cal.Rptr. 239 (1984) and that the Hall court was wrong in describing the Halls' claim as "novel". (Opposition, at p.11, and fn. 12, pp. 11-12)

Respondent's arguments that the Hall panel was unaware of Oceanside is simply inaccurate. This office was counsel for plaintiffs in the Hall case.

The City of Santa Barbara cited Oceanside to the trial court, again cited it in Appellee's Brief filed in the Ninth Circuit Court of Appeals, and the case was cited as well in Amicus for the City's

Brief. Obviously, the Hall court was aware of the Oceanside case and found it non-persuasive.

The Court was correct that the claim was "novel" when it said:

> In none of the cited cases has the landlord claimed that the tenant's right to possess the property at reduced rental rates was transferrable to others, that it had a market value, that it was in fact traded on the open market and that tenants were reaping a monetary windfall by selling this right to others.
>
> This is not a minor difference; it is crucial. The fact that the tenant can sell his interest to third parties drastically affects the economic realities of the landlord/tenant relationship. . . On the one hand, the landlord loses

> forever a fundamental aspect of fee simple ownership: The right to control who will occupy his property and on what terms. On the other hand, the tenant gets an interest that he can liquidate and take with him when he leaves the property.

Hall, at 1278-79, (emphasis added).

The Oceanside case dealt only with the allegation that prices for mobilehomes might increase as a result of the ordinance, raised by amicus. The Court said they would not.[3]

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[3] In the Hall case, at trial on remand, the plaintiff proved that the premium existed, that it had a value of $30,000, and that the departing tenants were experiencing a windfall in the amount of $30,000.

In Azul Pacifico, Inc. v. City of Los Angeles, 740 F.Supp. 772 (C.D.Cal. 1990), the Court awarded compensation in the amount of one million dollars for the unconstitutional effect of vacancy control.

Oceanside was an appeal from a facial attack on the City's mobilehome rent control law in which the trial court had enjoined application and enforcement, holding the ordinance:

> [F]acially unconstitutional because it believed the formula for setting initial rents and providing for adjustments fails to consider the property's fair market value and existing general market conditions and deprives park owners of a fair rate of return on their property.

(Oceanside, at 892-93).

Consequently, the Fourth Appellate Court was concerned with those issues. The confiscation that can occur when a landlord is denied a "just and reasonable" return on property is different than the interest at issue in this lawsuit. (See

Eg. Birkenfeld v. Berkeley, 17 Cal.3d 129, 130 Cal.Rptr. 465, 491 (1976)).

Appellants are not challenging the rate of return on their property, but are challenging the taking of the possessory interest. The analysis is necessarily different.

Moreover, the Court, in a truncated discussion of the analysis of the taking issue (by way of comparison, see the Hall decision encompassing ten pages of analysis) vitiated the factual premise upon which the Hall case is based. The court concluded that the ordinance in question there was:

> [S]tructured to establish a fair base rent which reflects general market conditions and incorporates relevant pricing factors. Rents will not be "reduced more than required for the purposes of police power."

(Oceanside, 157 Cal. App.3d 887, 908).

Further, it is clear that jurists are not in agreement that the Oceanside case decided the issues the City claims it did. The dissenting opinion in Yee v. City of Escondido, 224 Cal.App.3d 1349, 274 Cal.Rptr. 551 (1990) specifically addressed this argument in saying:

> The majority criticizes the Ninth Circuit decision in Hall for its failure to cite our earlier decision in Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside [citations] and affirms our continued reliance on '. . .what we assumed six years ago in Oceanside was accepted constitutional principle.' The difficulty, however, with this position is that although the Oceanside opinion discussed a multitude of issues having to do with the Oceanside ordinance dealing with

rent control of mobilehome parks, it did not really address the issue now before us. The only discussion that remotely resembles the issue in this case is entirely contained in a few paragraphs which the majority recites as succinctly concluding the Oceanside ordinance was fairly structured not to reduce rents more than required for the purposes of the police power. Respectfully, these paragraphs do not in any fashion analyze the issue presented here. Consequently, there is nothing in our Oceanside opinion which should be cited on the issue and we should perhaps forgive the Ninth Circuit Court of Appeals for its failure to do so.

Yee, supra, 274 Cal.Rptr. at 558-59 (emphasis added, citations to majority opinion omitted).

THE CONNECTICUT CASES CITED BY RESPONDENT, EAMIELLO AND THOMPSON, ARE NOT RENT CONTROL CASES, AND THEREFORE, NEVER REACH THE ISSUES RAISED BY HALL.

The "premium" that exists under Hall due to rent control should not be confused with the premium which is alleged to have existed as a result of a right to transfer occupancy under Eamiello v. Liberty Mobile Home Sales, 208 Conn. 620, 546 A.2d 805 (1988) app. dism. 489 U.S. 1002 (1989) and Thompson Enterprises v. Merlino, 208 Conn. 656, 545 A.2d 1094 (1988) app. dism., 488 U.S. 1024 (1989). A shorthand method for referring to the latter premium is "in-place" value.

A premium can exist in a mobilehome sale for any number of reasons, four immediately suggest themselves:

1. The premium exists due to the existence of rent control which

enables the outgoing tenant to monetize the right to occupy the space at a reduced rent (thus, enabling the tenant to sell what rightfully belongs to the landlord, i.e., the monetary value of the right to a long term lease at a reduced rent). That premium is condemned by Hall and Pinewood and was never reached by Eamiello.

2. An owner of a park, acting under a "cloud of rent control" (expert testimony at the time of trial of the Hall case on remand established the cloud of rent control), voluntarily keeps rents low, thus enabling the tenant to sell the coach at a premium. There, the proximate cause is the voluntary conduct of the park owner and may not be actionable.

3. The park owner, after years of experience with well-disposed tenants, voluntarily keeps rental rates low, thus enabling the tenant to receive a premium at the time of sale.

4. The existence of a state law permitting the transfer of occupancy (much like the California Mobilehome Park Residency Law), thus enabling the tenant to realize a premium, only so long as the park owner chooses not to raise rents at the time of sale. It is this aspect of the "premium" value, and none other, that Eamiello addresses. This is called "in-place" value.

Expert testimony is required at the time of trial. The expert testimony compares coaches sold in-place in non rent controlled parks against the selling

prices received by tenants selling their coaches in-place under rent control.

Thus, the expert testimony isolates out the variable of rent control because the coach prices compared are in-place. The only variable is the existence or non-existence of a rent control ordinance enabling the tenant to sell for a "greater premium" than that which would exist by virtue of being able to sell in-place.

The proximate cause of a premium is a question of fact to be determined at the time of trial, and not to be resolved summarily by way of disposition on a motion as was done in this case by the California courts. It is an incomplete analysis which claims that Eamiello in any way addresses the premium which was the focus of the Hall and Pinewood decisions.

While there was some restriction on the rentals which could be charged at the

time of sale under Famiello, it is clear from a reading of that statute that the park owner could raise all rents in the park without limitation so that the average value would enable the park owner to capture market value for the space at the time of the sale of a coach. Expert testimony will be offered at the time of trial to prove that if the park owner establishes rent at market levels, that the departing tenant receives only what is rightfully his, i.e., the value of the coach and not the monetized value of the right to occupy the space at a reduced rent premium. Again, these are factual issues to be resolved at the time of trial, and not matters of law to be resolved conclusively against this plaintiff by way of motion.

It should be observed that as long as it is only the California State Mobilehome

Park Residency Laws which are operating (just like the state law in Eamiello), the park owners have not sued and will not sue because they have not been economically harmed. So long as they are free to raise rents at the time of sale, they are free to capture the premium which would otherwise exist, and it is only the transfer of that right with its premium value to the departing tenant which creates a cause of action under Hall.

The Connecticut Court in Eamiello specifically acknowledged, "Unlike the ordinance in Hall v. City of Santa Barbara, our statute does not provide for rent control and limit the owner to a below market income." (546 A.2d 805, 820).[4]

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[4] The district court in Gibbs v. Southeastern Inv. Corp., 705 F.Supp. 738, 743 (D. Conn. 1989) made the distinction clear when it said: "Hall is not controlling authority for the instant case

It is precisely the provision in the ordinance for below market rents which enable the tenants to monetize their rent savings upon the time of sale of their mobile homes, and it is this transfer of wealth which is condemned by Hall and regarded as a taking by both the Ninth and Third Circuit Courts[5].

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because . . . the ordinance challenged in Hall provided for rent control in addition to limiting park owners' right to evict. Accordingly, the claim in Hall involved more than the statutory grant of a perpetual lease; it involved the right to a perpetual lease at a below market rental rate . . . a situation readily distinguishable from the instant case in which no rent control provisions are involved."

[5] Reconciling Eamiello with Hall supports the plaintiff's case. Eamiello supports the proposition that the California Mobilehome Park Residency Law (which is strikingly similar to the Connecticut law) is constitutional standing alone. Hall establishes that when rent controls like those in the City of Santa Barbara or the City of San Marcos permit tenants to capitalize their rent savings and sell them to others, an interest in property is taken from the owner, and transferred to the resident.

Further, it should be noted that the "monopoly" referred to in Eamiello (See Opposition p. 20) was, as a matter of fact, applicable in Connecticut because of "zoning ordinances that bar the establishment of new mobile home developments". (See Eamiello, supra, at 820). In California, quite the opposite situation exists. New mobilehome park development is encouraged and the Mobilehome Residency law (Cal. Civ. Code §§ 798 et seq) specifically exempts newly constructed mobilehome parks from local rent controls.

Thus, when a state law provides certain protections which may be constitutional, and a local government controls rents rendering the entire scheme unconstitutional, it is the local regulation, not the state law, which is unconstitutional. It is the totality of the regulatory scheme and the last act (rent control) which results in the taking which is actionable.

THE U.S VS. SPERRY CASE IS SIMPLY INAPPLICABLE HERE--PLAINTIFF COMPLAINS OF MORE THAN A LOSS OF MONEY.

Respondent City's citations to U.S. v. Sperry, 493 U.S. 52 (1989) do not aid its argument that Hall is no longer viable. To analogize plaintiff's complaint to the Sperry case which upheld a reduction in a monetary award, simply because the Sperry plaintiffs asserted a physical taking, is preposterous and underscores the City's cavalier attitude toward property rights.

The taking complained of here is of the possessory right to occupy at a reduced rate which is transferred to the tenants and, under vacancy control, can be subsequently sold to a third party in derogation of the landowner landlord's rights. Money is not the interest. The premium received by the outgoing tenant for the right to occupy at a reduced rate,

as outlined in the Hall decision and determined by the Hall District Court on remand, and in Azul Pacifico, Inc. v. City of Los Angeles, 740 F.Supp. 772, 778-779 (1990), is merely the measurement of the value of the property interest sold.[6]

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[6] Oddly enough, the Hall decision has proven a boon for incoming tenants. While rents were increased approximately $300 per month for a space, the purchase price of coaches reflected their actual worth (used coaches on a dealer's lot are almost worthless), and tenants are now able, and in fact have, purchased coaches in Mrs. Hall's park for sums in the range of $10,000 to $35,000 - instead of a prior range of $50,000 to $87,000. For example, the incoming tenant who purchases an $87,000 coach for $35,000 saves approximately $52,000, with a financing cost savings of $520 per month. The payment of the additional $300 per month leaves the incoming tenant with a net saving of $220 per month.

The outgoing tenant gets what is properly his, i.e., his "equity" in a depreciating asset that depreciates like a used car. What he cannot get is a "disguised equity" which really represents a transfer of a portion of the value of the wealth of the underlying land to the outgoing tenant.

Approximately 46 states, without the dubious benefits of rent control, manage to provide an free market

ANY DIFFERENCES BETWEEN THE SANTA BARBARA ORDINANCE AND THE SAN MARCOS ORDINANCE ARE IRRELEVANT TO THIS CASE.

Respondent City claims that the rent control ordinance creates no possessory interest because the rent control ordinance, unlike Santa Barbara's ordinance, does not require the delivery

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environment in which thousands upon thousands of mobilehomes are routinely sold without creating a windfall for the departing tenant or causing the unnecessary loss of the departing tenant's "equity." Once rent control is set in place, and successfully challenged, the market in then in a state of confusion until it recognizes the true value of the rights being transferred, at which time the tenants often act like economically reasonable people and are willing to pay a fractional increase in rent for a dramatic decrease in the price of an artificially inflated coach.

In the Azul Pacifico case, depositions revealed that at least one tenant paid $75,000 for a "junk coach" which she promptly scrapped upon a trade-in for the sum of $5,000. At her deposition she testified she was not buying the coach, but the space. That, as a matter of fact, is what occurs under rent control in a mobilehome park context.

of a written lease. The distinction is one of form but not substance.

In Azul Pacifico, Inc. v. City of Los Angeles, 740 F.Supp. 772 (1990), the Central District court, itself being the District Court in the Hall case, and having dealt with the issues raised therein for five years, rejected arguments by the City of Los Angeles that the Ordinance in the City of Santa Barbara was so distinguishable as to make Hall inapplicable and that the taking was effected by the State Mobilehome Residency laws, Cal. Civ. Code §§ 798 et seq.

> The City argues that it is not the RSO [Rent Stabilization Ordinance] which forces a landlord to offer a tenant a lease of indefinite term, therefore this Court cannot find the ordinance to be unconstitutional. The City made this argument during

> pretrial motion practice and it is no more convincing now than it was then. In this Court's Memorandum of Decision Re: Defendant's Motion to Dismiss, filed December 2, 1987, this Court wrote, "[t]he Los Angeles Rent Control Ordinance does not operate in a vacuum. Presumably the drafters of the ordinance knew of the state statute when the ordinance was enacted. The combination of the ordinance and the state statute, as alleged in the complaint, caused the effect articulated in Hall, specifically that the limitation on rents under the ordinance allows a tenant to sell a mobile home at a premium.

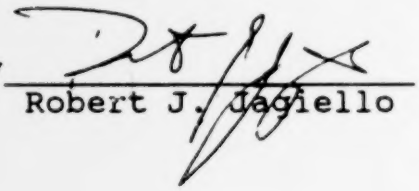
Azul Pacifico, 740 F.Supp. 772, 775-76.

IN CONCLUSION

Petitioner respectively requests the Petition for Writ of Certiorari be granted and the case set for further briefing.

Dated: August 1, 1991

Law Offices of Jagiello & Pech

By 
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